

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1820 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SANGHANI PRAVINCHANDRA M

Versus

JOINT CHARITY COMMISSIONER

Appearance:

MR KG VAKHARIA for Petitioner
MS SR DIVETIA for Respondent No. 1
None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/09/97

C.A.V. JUDGEMENT

1. There were three petitioners earlier in this Special Civil Application, but during the pendency of the Special Civil Application, the petitioners No.2 and 3 have expired. The heirs and legal representatives of the petitioners No.2 and 3 have not been brought on record either by the petitioner No.1 nor their heirs and legal representatives have come before this Court by filing an

application. In view of this fact, the Special Civil Application on behalf of the petitioners No.2 and 3 abates and the same is dismissed. Rule discharged.

2. During the pendency of this Special Civil Application, the respondents No.2, 3 and 7 have also expired and on the request of the counsel for the petitioner, the names of these respondents were ordered to be struck off.

3. Challenge in this Special Civil Application has been made to the order of the Gujarat Revenue Tribunal dated 15-3-1983 and that of the Charity Commissioner dated 14th April, 1981 as well as to the earlier order of the Gujarat Revenue Tribunal dated 14-11-1976 in the matter of grant of permission to the trustees to lease out the property of the trust to respondent No.11. None of the petitioners were the trustee of the trust nor they were the persons who have participated in the proceedings for the lease of the property of the trust by public auction. They seem to be the busy-body. The trust is named as Dasa Sorathia Vanik Gnati Samaj Trust (community property), Jamnagar. The property of the trust is situated in Jamnagar city which is an open piece of land. The total area is 69000 sq. fts.. On this total land, as per the case of the petitioners, the only built up area is a small room.

4. The dispute pertains to the part of the aforesaid land admeasuring 27000 sq. fts. which is given on lease by the trust to respondent No.11. In the year 1969, the respondent No.11 had given an offer for the land of 27000 sq. fts. for lease thereof on premium at the rate of Re.1/- per sq. ft. per annum. He asked the land on lease for 40 years. The trust has accepted the aforesaid offer of the respondent No.11, but the Charity Commissioner declined to grant the sanction to this transaction under its order dated 12th September, 1969. Against the declination of the Charity Commissioner of the sanction to the aforesaid transaction, an appeal was preferred before the Gujarat Revenue Tribunal, which came to be decided under the order dated 19th June, 1970. The Gujarat Revenue Tribunal has rejected the appeal under the said order. The trustees after decision of their appeal by Gujarat Revenue Tribunal had submitted an application on 23rd September, 1971 to the Charity Commissioner for grant of sanction for the lease of the land in dispute to the respondent No.11 on premium at the rate of Rs.1-30 per sq. ft. per annum for the first ten years and Rs.1-50 per sq. ft. per annum for subsequent another ten years. The Charity Commissioner declined to

grant the sanction to this prayers of the trustees vide its order dated 10th July, 1974. The trustees against this order of the Charity Commissioner preferred an appeal before the Gujarat Revenue Tribunal. This appeal came to be decided under the order dated 14th November, 1975. The matter was remanded back by the Tribunal to the Charity Commissioner to decide the same afresh. After considering all the aspects of the matter, the Charity Commissioner under its order dated 14th April, 1981 granted the sanction for lease of the disputed land in favour of the respondent No.11. The petitioners had preferred an appeal against the aforesaid order before the Revenue Tribunal which came to be dismissed under the order dated 15th March, 1983. Hence, this Sp. C.A..

5. The petitioner has produced certain documents and also a short note of the relevant facts. The petitioner has stated that the lessee, the respondent No.11, Hasmukhlal Padamnath Somaiya has not taken the possession of the land in question. The trust is in possession of the land in question. The trust filed regular civil suit No.1045/84 in the Court of Civil Judge (J.D.), Jamnagar against the respondent No.11 praying for the recovery of the rent of Rs.1,05,300/- with running interest, which was the rent till the date of the suit i.e. 9th October, 1984. In the said suit, the respondent No.11 has filed a written statement on 18th March, 1985. The defence has been taken therein that he is not liable to pay the rent and his liability to pay the rent will arise only after he gets no objection certificate for the construction of cinema theatre over the disputed land and that he has not been given such permission uptill now and therefore he is not liable to pay the amount. The civil court passed the order under sec.11(4) of the Bombay Rent Act directing the respondent No.11 to pay Rs.1,55,250/- towards the rent on or before 30th April, 1988 and also directing him to regularly pay Rs.31,050/- per year. That order of the civil court is sub-judice in the Civil Revision Application No.7/89 in the court of District Judge at Jamnagar. It has further been stated the the lease which has been sanctioned for the period of 20 years from 14th April, 1981 will be over on 13th April, 2000.

6. The learned counsel for the petitioner challenging the order of the Charity Commissioner and that of the Tribunal contended that the Charity Commissioner and the Tribunal ought to have refused the sanction of the lease of the land in dispute as the rate offered is highly inadequate and at this rate no property can be given on lease. It has next been contended that once the sanction for lease has been declined by the

Charity Commissioner then the Charity Commissioner could not have granted the sanction as the second application filed by the trustees is barred by the principle of res-judicata. Lastly, the counsel for the petitioner contended that the conduct of the Managing Trustees is to cause loss to the trust inasmuch as they have tried to use the political interference in the matter. They were determined to grant the land to respondent No.11 at any costs as it seems that they are highly interested in the said dealing.

7. On the other hand, the counsel for the respondent, Shri S.R. Divetia, supported the order of the Charity Commissioner as well as that of the Tribunal.

8. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

9. The first contention of the learned counsel for the petitioner regarding inadequate rate of rent of land which has been leased to the respondent No.11 by the trust, it is suffice to say that the petitioner has not given any offer for higher rent or lease hold rights of the land in dispute. Lease hold rights of the land in dispute were given to the respondent No.11 only after a public auction. His rate was found to be the highest. The petitioner has also not suggested in the special civil application that there were other prospecting persons for having of this land on lease at higher rent than what has been offered and on which the lease has been sanctioned in favour of the respondent No.11. The petitioner only seems to be the busy-body whose interest is to defeat the purpose and object of the trust by seeing that the trust may not get any income from the property. As the economic condition of the trust was not good, and a such, to augment its income for the purpose of fulfillment of its object, the land in dispute was sought to be given on lease and the petitioner instead of seeing that the lease is granted and the income of the trust is started, he has put the matter in litigation. The Tribunal has rightly observed that even at the time of hearing of the appeal nobody was willing to give more amount than that has been agreed to be paid by the respondent No.11. The Tribunal has further observed that the appellant in Appeal No.46/81 i.e. the petitioner No.3, herein, though he expired and his heirs and legal representatives have not been brought on record, was only interested in delaying the matter inasmuch as he was also not willing to take the land in dispute on lease at an higher amount or even at the rate as granted by the Joint Charity Commissioner under his order dated 14th April,

1981. The Tribunal has recorded a finding of fact that the respondent No.11 was admittedly the highest bidder before the Joint Charity Commissioner. To see the bonafides of the petitioner (the appellants before the Tribunal), the Tribunal asked them as to whether they were ready and agree to keep the said land at some what higher rate or even at the same rate at which the land was leased to the respondent No.11, but none of them had shown their willingness to do so. So from this finding of the Tribunal aforesaid, it is clear that the petitioners, the appellants before the Tribunal, were only interested to defeat the very purpose and object of lease of the land by the trustees.

10. Sec.36 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as "the Act, 1950") provides that notwithstanding anything contained in the instrument of trust - no sale, mortgage, exchange or gift of any immovable property, and no lease for a period exceeding ten years in the case of agricultural land or for a period exceeding three years in the case of a non-agricultural land or a building belonging to a public trust, shall be valid without the previous sanction of the Charity Commissioner.

11. Sec.36 of the Act, 1950 has not taken the power of the Trust to sale, mortgage, exchange or gift or lease out its immovable property, but what restriction provided by the legislature is that before doing so, the Trust has to take the previous sanction of the Charity Commissioner. There is no absolute bar in the transfer of the land by the trustees, but it can be done only after taking the previous sanction of the Charity Commissioner. The Charity Commissioner while considering the matter of grant of sanction has to consider whether the deal which is sought to be entered into by the trust is in the interest of the trust or not. So, whatever alienation is to be made of the immovable property of the trust should be in the interest of trust which is the only thing to be considered by the Charity Commissioner. The Tribunal has found as a fact that the trust does not have adequate amount of income whatsoever and that it has to incur debt for incurring expenditure for maintenance of the temples, education of the community people etc. which easily goes to Rs.2800/- per year whereas its income was only of Rs.800/- per year. This finding of the Tribunal has not been challenged by the learned counsel for the petitioners before this Court. So from the aforesaid facts, the Tribunal has not committed any error in drawing an inference that this fact itself goes undoubtedly to establish that the said trust was required

to create the income from its immovable property. The trust was not having the sufficient income from other source and to overcome its financial difficulties, the Trustees have rightly taken the decision to lease out the some of the land out of the big land of area of 69000 sq. fts. When the Charity Commissioner has granted the lease of land of the trust to the respondent No.11, it cannot be said that the trustees have misused their office or this deal was only with the object of personal gains. To have control and check on the trustees of misusing their office and to transfer the land etc. for their personal gains, section 36 of the Act, 1950 has been enacted by the legislature. All the deals of immovable properties of the trust by the trustees, are subject to the sanction by the Charity Commissioner and when the Charity Commissioner has sanctioned the same then the allegation of the aforesaid nature against the trustees is difficult to accept. There is no malafides alleged by the petitioner against the Charity Commissioner who has decided the matter under sec.36 of the Act, 1950 in the present case.

12. The counsel for the petitioners by producing the document, reference of which has been given in the earlier part of the judgment, contended that the object of the trust to sale or lease out the property has not been fulfilled as the lessee has not paid any rent to the trust. But these are the subsequent events, and this Court cannot be oblivious of the fact that the said suit has been filed by the trust for the recovery of the amount of lease and the said suit has been decreed in favour of the trust. On subsequent conduct of the lessee of non-payment of the rent of the leased property, the order of the Charity Commissioner passed under sec.36 of the Act, 1950 as well as the alienation of the property of the land in dispute will not become illegal or arbitrary. However, during the course of arguments, this Court asked the counsel for the petitioner that still if the petitioner is ready to pay all the rent of the land which has become payable till date then the lease hold rights given in favour of the respondent No.11 may be set aside. But the counsel for the petitioner submitted that his client is not willing to take the land on lease. This fact coupled with the finding recorded by the Tribunal goes to show that the petitioner's intention was only to defeat the purpose and object of the trust and he is not a bonafide person who is really working for the advancement of the purpose and object of the trust. The lease hold property has been given only for 20 years and on completion of the period of the lease it will revert back to the trust.

13. The net result of the aforesaid discussion is that the grievance of the petitioner that the land in dispute has been leased out to the respondent No.11 at the rate which is highly inadequate is devoid of any substance.

14. The second contention of the learned counsel for the petitioner regarding the plea of res-judicata, it is suffice to say that it is also devoid of any merits. Sec.36 of the Act, 1950 nowhere provides that once the sanction has been declined for alienation of the immovable property of the trust then at the subsequent stage, the matter cannot be considered. At one point of time, the Charity Commissioner would not have sanctioned the alienation of the immovable property of the trust on the ground of inadequate consideration offered by the transferor or the lessee, but how once for all the trust could have been put in a position not to take up the matter again for alienation of the property. These are the matters which are open for further consideration at a later stage also and whatever decision taken by the trust for alienation of the immovable property of the trust is subject to the approval of the Charity Commissioner under sec.36 of the Act, 1950. If the principle of res-judicata is made applicable to such matters then no trust would be in a position to alienate its immovable property though it would have been in the larger interest of the trust itself or it would have been necessary for the purpose of fulfilling the object and purpose of the trust. It would not have been the object of the trust as well as of the Act, 1950 that the land or property of the trust should have been permitted to remain without any use where once the Charity Commissioner declined to grant the sanction for alienation of the same. The Tribunal has considered that point of res-judicata raised before it earlier in the appeal No.47/74 and the said point was not accepted. This finding of the Tribunal has not been challenged by the counsel for the petitioner. Once the Tribunal has already decided that there is no res-judicata in such matters, how far it is open to the petitioner to raise this point.

15. While dealing with the matter under sec.36 of the Act, 1950, predominant consideration should be to see that the interest of the trust is sufficiently protected by disposing of or alienation of its immovable property. The interest of trust is the only consideration and if the Charity Commissioner on second time takes into consideration the better offer than it was earlier for the lease of the land in dispute then it has all the

power to grant the sanction to such transaction under the said provision and to which no exception can be taken. From the orders of the Charity Commissioner as well as of the Tribunal, it is clear that the offer of the respondent No.11 this time was much higher than what it was in the earlier transaction. He has given the offer at Rs.1-30 per sq. mt. per annum for first ten years. Further offer was that he will pay at the rate of Rs.1-50 per sq. mt. per annum for the next ten years. In view of these facts, the decision of the Charity Commissioner of sanction of the transaction of the lease of the land in dispute in favour of the respondent No.11 cannot be said to arbitrary or against the interest and object of the trust. Moreover, the petitioner who is not at all willing to give any higher offer than what it has been given by the respondent No.11 and he was not a person who has participated in the auction of the lease hold rights of the property of the land in dispute as well as he has also not brought any prospecting lessee of the land in dispute with better offer, how far it does lie in his mouth to challenge this order only on this ground.

16. The appeal against the order of the Charity Commissioner under sub-section (3) of sec.36 is only maintainable by a person aggrieved by the decision of the Charity Commissioner. In the facts of the case which are stated earlier, I have my reservation whether the petitioner in this case can be said to be an aggrieved person.

17. The last contention of the counsel for the petitioner is wholly untenable. The petitioner is unable to make out any case that the deal in question has resulted in the loss of the trust. Merely because the Managing Trustee would have approached to the Hon'ble Minister concerned and Hon'ble Minister concerned would have phoned to the Charity Commissioner, how this fact can be said to have any relevance to the legality, propriety and correctness of the order of the Charity Commissioner. The Tribunal has to consider the legality of that order in appeal filed under sec.36 (3) of the Act, 1950 and the Tribunal has held that the order of the Charity Commissioner was perfectly legal and justified. I have examined that order and I also do not find any illegality therein which requires any interference of this Court sitting under Article 226 of the Constitution of India. The interference at the instance of a person who was neither interested to have the land in dispute, and even at subsequent stage when the Tribunal as well as this Court asked, he is not willing to take the land in dispute, should not be made under Article 226 of the

Constitution. This Court under Article 226 of the Constitution though could have issued a writ of certiorari, but while dealing with this matter, it has to see whether a bonafide person has come up before this Court or not. In the facts of the present case, it cannot be said that any of the legal or fundamental rights of the petitioner are being infringed. The petitioner is unable to make out any case that the alienation of the immovable property which is the subject matter of this petition, is in any manner detrimental to the interest of the trust.

18. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated.

zgs/-